2017 IL App (5th) 150280-U

NO. 5-15-0280

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LEISA J. HOLMES, Special Representative for Austin Holmes, Deceased,	)	Appeal from the Circuit Court of Williamson County.
Plaintiff-Appellant,	)	
v.	)	No. 14-L-64
ADDISON INSURANCE COMPANY,	)	Honorable Brad K. Bleyer,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Barberis* concurred the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment in favor of the insurer where the plaintiff could not show that there was liability coverage for the negligent driver under a commercial auto liability policy issued by the defendant.

¶ 2 The plaintiff, Leisa J. Holmes, Special Representative for Austin Holmes, deceased, filed a declaratory judgment action to determine whether there was liability

*Justice Stewart was originally assigned to participate in this case. Justice Barberis was substituted on the panel subsequent to Justice Stewart's retirement and has read the brief and listened to the recording of oral argument.

coverage for a motor vehicle accident involving Austin Holmes and the alleged negligent driver, Ryan Anderson, under a commercial auto policy issued to Anderson Truss Company, Inc. (Anderson Truss), by the defendant, Addison Insurance Company. Each party moved for summary judgment on the issue of coverage. Following a hearing, the trial court determined that Ryan Anderson was not an insured under the policy, and entered an order granting the defendant's motion for summary judgment and denying the plaintiff's motion for summary judgment. On appeal, the plaintiff contends that the trial court erred in granting summary judgment for the defendant because the insurance policy extended coverage to Ryan Anderson as the driver of a covered, nonowned vehicle. For reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND AND PROCEDURE

¶ 4 *The Factual Background*

¶ 5 The pertinent facts in this appeal are relatively undisputed, and are taken from the discovery depositions of Ryan Anderson, and his parents, Boyd Anderson and Barbara Anderson.

¶ 6 On January 10, 2010, shortly before noon, Austin Holmes and Ryan Anderson were involved in a motor vehicle accident. Austin was driving a 1998 Honda Civic eastbound on Galatia Post Road, approaching the "T" intersection at Welborn Lane. At that same time, Ryan was driving a 1997 Dodge Ram pickup truck westbound on Galatia Post Road, approaching Welborn Lane. Two other westbound vehicles were stopped at the "T" intersection, just ahead of Ryan, waiting to turn left onto Welborn Lane. As Ryan neared the intersection, his truck began to slide on the slushy, wet pavement. Ryan

was able to steer out of the slide, but almost immediately after he corrected his course, the truck began sliding again. The passenger side of the truck struck the rear of the second vehicle at the intersection. The truck ricocheted into the eastbound lane of Galatia Post Road, where it collided with Austin's vehicle. Austin suffered serious and debilitating injuries, including orthopedic and brain injuries, as a result of the collision. Tragically, Austin took his own life on June 12, 2014.

¶ 7 At the time of the collision, Ryan Anderson was 19 years old. He resided with his parents, Boyd and Barbara Anderson, and he was employed by Brown's Fertilizer Company. Ryan was driving home from church when the collision occurred. Ryan was not hauling products or otherwise working for anyone on the day of the collision.

¶ 8 Boyd and Barbara Anderson owned the 1997 Dodge Ram pickup truck that Ryan was driving at the time of the collision. The truck and other family vehicles were insured under an auto insurance policy issued by State Farm Mutual Automobile Insurance Company. The truck had been provided to Ryan for his personal use shortly after his sixteenth birthday, and he was the primary driver of that vehicle from October 2006 through January 10, 2010. In prior years, Boyd Anderson had been the primary driver and had used the truck in his business and personal pursuits.

¶ 9 On the day of the accident, there was a decal that was affixed to the rear window of the truck. The decal depicted the corporate logo of Anderson Truss, a business operated by Boyd and Barbara Anderson. The logo featured the outline of a roof truss, with "Anderson Truss" centered in large block letters just below. Ryan's uncle had ordered the decals, and had provided them to relatives to display on their vehicles. There

is no testimony indicating that Ryan's uncle was employed by or working on behalf of Anderson Truss when he obtained and distributed the decals. There was no testimony indicating that Boyd Anderson, Barbara Anderson, or Anderson Truss participated in any way in the design, purchase, or distribution of the decals.

¶ 10 Anderson Truss is an S corporation, and it is engaged in the business of crafting custom roof trusses, and delivering them to its customers. Boyd and Barbara Anderson have operated the business since they opened it in 1998. Boyd Anderson is the president of the company. On January 10, 2010, the Anderson Truss company owned a 2002 Dodge 3500 truck and two trailers. These vehicles were used to deliver trusses to customers. Anderson Truss also owned a Ford F250 pickup truck that was used in the business, and driven primarily by Boyd Anderson. Each of these vehicles was listed as a covered vehicle on the declarations pages of the commercial auto policy that the defendant issued to Anderson Truss.

¶ 11 *The Commercial Auto Policy*

¶ 12 The policy at issue is a commercial auto policy. Anderson Truss purchased the policy from the defendant. The insurance policy documents include several pages containing "Declarations" (Declarations Pages). The policy also contains coverage information and several additional endorsements. "Item One" in the Declarations Pages indicates that the policy was in effect from June 17, 2009, to June 17, 2010, and that Anderson Truss Company, Inc., was the only named insured. It further states that the insurer will provide the insurance described in this policy in return for the premium and compliance with all applicable policy provisions.

¶ 13 "Item Two" in the Declarations Pages contains the Schedule of Coverage and Covered Autos. This section indicates that the policy provides only those coverages where a charge is shown in the premium column, and that each of the coverages will apply only to those autos shown as covered autos. Item Two indicates that liability coverage was purchased for covered autos with symbols 07, 08, and 09. The limit of insurance was $1 million and the premium cost for that coverage was $803.

¶ 14 "Item Three" in the Declarations Pages lists by year, make, and model, the scheduled autos that were owned by Anderson Truss during the policy period. Notably, the 1997 Dodge Ram pickup truck involved in the collision is not listed as a scheduled auto.

¶ 15 The first page of the policy provisions is entitled "Business Auto Coverage Form." The opening preface notes that various provisions in the policy restrict coverage, and directs the reader to review the entire policy carefully to determine the "rights, duties and what is and is not covered." The preface states that throughout the policy, the words "you" and "your" refer to the named insured shown in the Declarations, and that the words "we," "us" and "our" refer to the company providing the insurance. The preface further states that other words and phrases, appearing in quotation marks, have special meanings which may be located in Section V–Definitions.

¶ 16 Section I of the Business Auto Coverage Form discusses "Covered Autos":

> "SECTION I–COVERED AUTOS
>
> Item Two of the Declarations shows the 'autos' that are covered 'autos' for each of your coverages. The following numerical symbols describe the 'autos' that may be

covered 'autos'. The symbols entered next to a coverage on the Declarations designate the only 'autos' that are covered 'autos'."

¶ 17 Following that paragraph is a subsection captioned: "A. Description of Covered Auto Designation Symbols." Beneath this heading is a table with a listing of symbols 1 through 9 and symbol 19, and a descriptive paragraph directly adjacent to each symbol number. Only Symbol 9 is at issue in this case. Symbol 9 provides the following description:

Symbol		Description of Covered Auto Designation Symbols
9	Nonowned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

¶ 18 Section II of the Business Auto Coverage Form discusses "Liability Coverage." Subsection A of the Liability Coverage section states, "We will pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto'." This section further states that the insurer has the right and duty to defend any insured against a suit seeking damages, but that it has no duty to defend any insured against a suit to which this insurance does not apply.

¶ 19 Subsection 1 of section A is captioned "Who Is An Insured," and states in pertinent part:

"1. Who Is An Insured

The following are 'insureds':

a. You for any covered 'auto'.

b. Anyone else while using with your permission a covered 'auto' you own, hire or borrow except:

* * *

c. Anyone liable for the conduct of an 'insured' described above but only to the extent of that liability."

¶ 20 Section V of the Business Auto Coverage Form defines quoted terms and phrases used in the policy. "Insured" means "any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage." Employee is defined to include a "leased worker," but not a "temporary worker."

¶ 21 The policy also contains a "Business Auto Ultra Endorsement," with a separate premium charge of $150. This endorsement, among other things, amends the "Who Is An Insured" paragraph in Section II of the policy to include: "f. Any employee of yours while acting in the course of your business or your personal affairs while using a covered 'auto' you do not own, hire or borrow."

¶ 22 *Procedural History*

¶ 23 In 2011, Austin Holmes filed a negligence action against Ryan Anderson in the circuit court of Williamson County. In April 2014, Austin filed a complaint for declaratory judgment against the defendant, Addison Insurance Company, in Williamson County, asking the court to determine whether Ryan was covered for the January 10, 2010, incident under a commercial auto policy that the defendant had issued to Anderson Truss. Austin set forth the pertinent factual allegations regarding the motor vehicle collision that had occurred on January 10, 2010, and attached a copy of the commercial auto policy to the complaint. Austin alleged that Ryan was an insured under the policy at the time of the collision for one or more of the following reasons:

"a) This Dodge Ram pickup truck was being 'used in connection with' the Anderson Truss Company business due to the advertising function of the decal in the back windshield.

b) This Dodge Ram pickup truck was owned by a chief officer of the named insured, Anderson Truss Company, Inc., and being driven by a member of his household for his personal affairs.

c) In the alternative, the language of this policy, including the exclusionary language when read in conjunction with the coverage language is ambiguous and as such must be construed in favor of providing insurance coverage."

¶ 24 On June 2, 2014, the defendant filed an answer to the complaint for declaratory judgment. In its answer, the defendant admitted it had issued a commercial automobile insurance policy to Anderson Truss, but denied each allegation indicating that the policy provided coverage to Ryan for the collision on January 10, 2010.

¶ 25 On July 29, 2014, as a result of the death of Austin Holmes, his mother, Leisa J. Holmes, was appointed as Special Administrator of the Estate of Austin Holmes in the negligence action. She was also substituted as the named plaintiff in the declaratory judgment action.

¶ 26 Following a period for discovery in the declaratory action, the plaintiff filed a motion for summary judgment, and asked the court to enter a judgment declaring that Ryan was covered for the January 10, 2010, accident under the commercial auto policy that the defendant had issued to Anderson Truss. The plaintiff claimed that the truck that Ryan was driving at the time of the collision was a nonowned auto under Symbol 9 in the

Declarations Pages. The plaintiff argued that the undisputed evidence demonstrated that the truck was not owned, leased, hired, rented, or borrowed by Anderson Truss at the time of the collision. The plaintiff pointed out that under Symbol 9, nonowned autos included autos that were owned by employees, partners, members, or members of their households, while used in the business or personal affairs of Anderson Truss. The plaintiff claimed that there was some evidence that the truck was being used in connection with the business of Anderson Truss, in that there was a decal with the Anderson Truss logo displayed on the rear window of the truck. The plaintiff argued that the decal had not been removed when the truck was given to Ryan for his personal use, and, therefore, the decal was being used to promote the business of Anderson Truss. The plaintiff maintained, in the alternative, that the term "personal affairs" was broad, and susceptible to a number of meanings. Therefore, the plaintiff claimed that "personal affairs" was an ambiguous term, and that it should be liberally construed in favor of coverage.

¶ 27 The defendant responded with a combined motion for judgment on the pleadings and for summary judgment. Since the trial court ruled only on the motion for summary judgment, we will not consider the contentions in the motion for judgment on the pleadings. In the motion for summary judgment, the defendant argued that it had issued a commercial auto liability policy to Anderson Truss, that Anderson Truss was the sole named insured on the policy, and that Ryan did not qualify as "an insured" under either the auto policy, or any endorsement. The defendant further argued that the truck was not a covered vehicle under Symbol 9 of the policy because it was not being used in

connection with the business, or the personal affairs of Anderson Truss at the time of the accident. The defendant noted that the plaintiff had never alleged in her complaint that Ryan was employed by Anderson Truss on the date of the collision. The defendant pointed out, based on the undisputed evidence, that Ryan was not employed by, and was not performing any work for Anderson Truss on the date of the collision. Additionally, the defendant pointed out that the evidence clearly established that the truck was not being used for a business purpose on the day of the collision, and that it had not been used in the business of Anderson Truss for more than two years prior to the collision.

¶ 28 On June 1, 2015, the parties appeared and presented arguments in support of their respective motions for summary judgment. The record on appeal does not include a report of proceedings from that hearing. Following the hearing, the court took the motions under advisement.

¶ 29 On June 16, 2015, the trial court issued a written order granting the defendant's motion for summary judgment, and denying the plaintiff's motion for summary judgment. In its order, the court initially recognized that the policy provided liability coverage for all sums "an insured" was legally obligated to pay as damages because of bodily injury or property damage to which the insurance applied. The court acknowledged that the threshold question was whether Ryan qualified as "an insured" under the Business Auto Ultra Endorsement because he was an employee of Anderson Truss, and was acting in the course of its business at the time of the collision. The court also reviewed the additional definition of "an insured" contained in the endorsement. In light of its consideration of the policy as a whole, the court found: "In reviewing all evidence presented, the court is

unable to find that Ryan Anderson was an employee of Anderson Truss on 1-10-2010. Since Ryan Anderson cannot be determined to be an employee, he does not meet the definition of 'an insured' under the policy." The court went on to find that had the plaintiff been able to show that Ryan was an employee of Anderson Truss on the day of the collision, there would have been a compelling argument that the inclusion of the term "personal affairs" in the endorsement created an ambiguity, thus mandating a finding in favor of coverage. Because there was no evidence that Ryan was an employee on the date of the accident, the trial court held that the plaintiff failed to show that Ryan was "an insured" under the policy or the endorsement, and entered summary judgment for the defendant.

¶ 30 II. ANALYSIS

¶ 31 Summary judgment is properly granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in a light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204, 1209 (1992). Summary judgment is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Outboard Marine Corp.*, 154 Ill. 2d at 102, 607 N.E.2d at 1209. When the parties file cross-motions for summary judgment they agree that there are only questions of law to decide and they invite the court to decide the issues based on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28, 978 N.E.2d 1000. On appeal from an order granting summary judgment, the

standard of review is *de novo*. *Outboard Marine Corp.*, 154 Ill. 2d at 102, 607 N.E.2d at 1209.

¶ 32 The issue before us involves the interpretation of provisions in a commercial auto insurance contract. Insurance contracts are subject to the same rules of construction applicable to other types of contracts. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416, 860 N.E.2d 280, 285 (2006). The primary objective in construing a policy is to determine and give effect to the intent of the parties as expressed by the plain words of the policy. *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 371, 875 N.E.2d 1082, 1090 (2007). The policy must be construed as a whole, giving effect to every provision, and taking into account the type of insurance provided, the nature of the risks involved, and the overall purpose of the contract. *Rich*, 226 Ill. 2d at 371, 875 N.E.2d at 1090.

¶ 33 If the terms used in the policy are clear and unambiguous, they must be given their plain, ordinary, and popular meaning, and the policy will be applied as written, unless it contravenes public policy. *Nicor, Inc.*, 223 Ill. 2d at 417, 860 N.E.2d at 286. Conversely, if the terms are susceptible to more than one reasonable interpretation, they will be considered ambiguous and construed strictly against the insurer who drafted the policy. *Nicor, Inc.*, 223 Ill. 2d at 417, 860 N.E.2d at 286. In addition, provisions that limit or exclude coverage will be interpreted liberally in favor of the insured and against the insurer. *Rich*, 226 Ill. 2d at 371, 875 N.E.2d at 1090.

¶ 34 An insurance contract is not rendered ambiguous merely because the parties disagree as to its meaning. *Rich*, 226 Ill. 2d at 371, 875 N.E.2d at 1090. A court will

consider only reasonable interpretations of the policy and will not strain to find an ambiguity where none exists. *Rich*, 226 Ill. 2d at 372, 875 N.E.2d at 1090. The construction of an insurance policy and the determination of the rights and obligations thereunder present questions of law, subject to *de novo* review. *Rich*, 226 Ill. 2d at 370, 875 N.E.2d at 1089.

¶ 35 On appeal, the plaintiff contends that the trial court erred in finding that Ryan Anderson was not covered for the January 10, 2010, accident under the commercial auto liability policy issued by the defendant. The plaintiff claims that the trial court improperly considered only whether Ryan was an insured under the policy at the time of the collision, when that was not the only basis for coverage under the policy. The plaintiff argues that coverage would be afforded to Ryan if the truck Ryan drove at the time of this collision qualified as a "nonowned auto" under Symbol 9 in Section I of the policy because there was no requirement that a nonowned auto was being operated by an insured under Symbol 9. After reviewing the entire policy, we believe that the plaintiff's interpretation is too narrow, restricting the focus to a single subsection of the policy, when the provisions in an insurance policy are to be construed as whole, giving effect to every provision. *Rich*, 226 Ill. 2d at 371, 875 N.E.2d at 1090.

¶ 36 A copy of the commercial auto policy at issue is in the record. Sections I and II of the policy are pertinent to this appeal. Section I describes the covered autos for each of the coverages purchased. Section II addresses the liability coverage afforded under the policy, and provides that the defendant "will pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies,

caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto'."

¶ 37 In this case, there is no question that Austin Holmes suffered bodily injury in the collision with Ryan Anderson. In determining whether the policy afforded liability coverage to Ryan for the collision on January 10, 2010, we must consider whether the truck that Ryan drove qualified as a nonowned auto under Section I–Covered Autos of the policy, and whether Ryan was considered "an insured" under Section II–Liability Coverage. In our view, both requirements must be satisfied to qualify for coverage. *First Chicago Insurance Co. v. Molda*, 2015 IL App (1st) 140548, ¶ 35, 36 N.E.3d 400.

¶ 38 *Whether the Truck Was a Nonowned Auto*

¶ 39 In Section I of the policy, Symbol 9 describes nonowned autos as: "Only those 'autos' you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes 'autos' owned by your 'employees', partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs." Accordingly, a vehicle must satisfy two requirements to fit within the description of a nonowned auto under Symbol 9. The first is that the vehicle must not have been owned, leased, hired, rented, or borrowed by the named insured at the time of the accident. The second is that the vehicle must have been used in connection with the business or personal affairs of the named insured at the time of the collision.

¶ 40 In this case, it is undisputed that Ryan's parents owned the truck that Ryan drove on the day of the collision. It is also undisputed that the truck was not leased, hired,

rented, or borrowed by Anderson Truss Company on the day of the collision. Therefore, the first requirement of a nonowned vehicle is satisfied.

¶ 41 In order to meet the second requirement, the truck must have been used in connection with the business or the personal affairs of Anderson Truss at the time of the collision. Initially, the plaintiff notes that Symbol 9 merely requires that the auto be used "in connection with" the business. The plaintiff claims that the phrase "in connection with" is broad and could mean "with reference to" or "concerning." The plaintiff argues that there is a material issue of fact as to whether the truck was being used "in connection with" the business of Anderson Truss at the time of the accident, given the fact that an Anderson Truss decal was prominently displayed in the rear window of the truck, and the fact that the truck was owned by Boyd Anderson, the president of Anderson Truss.

¶ 42 The plaintiff correctly notes that in the context of insurance contracts, the phrase "in connection with" has been found to be broad and vague, and therefore ambiguous. *Molda*, 2015 IL App (1st) 140548, ¶ 45, 36 N.E.3d 400; *Hartford Fire Insurance Co. v. Whitehall Convalescent & Nursing Home, Inc.*, 321 Ill. App. 3d 879, 889, 748 N.E.2d 674, 683 (2001). But, even reading the phrase broadly, with the meanings suggested by the plaintiff, the undisputed facts fall short of establishing the plaintiff's claim that the display of an Anderson Truss decal in the rear window of a truck owned by Boyd Anderson, constituted a use of the truck that concerned or was in furtherance of the business of Anderson Truss. In this case, it is undisputed that Ryan was driving the truck home from church when the collision occurred. At that time, Ryan was not employed by Anderson Truss, and he was not hauling any product or doing any business for that

company. The truck had been provided to Ryan for his personal use shortly after his sixteenth birthday, and it had not been used by Anderson Truss since Ryan began driving it. There was an Anderson Truss Company decal on the rear window of the truck on the day of the collision. A few years prior to the collision, Ryan's uncle had the decals made, and he gave them to relatives to put on their vehicles. In this case, the plaintiff neither alleged nor offered any evidence indicating that Ryan's uncle was employed by or working on behalf of Anderson Truss at the time he had the decals made, or at the time he distributed them. The plaintiff did not offer any evidence indicating that the distribution of decals was part of an organized advertising campaign designed and implemented by or on behalf of Anderson Truss. Based on the undisputed facts, we do not believe that a reasonable person could conclude that the truck was being used in connection with or in furtherance of the business of Anderson Truss at the time of the collision.

¶ 43 The plaintiff argues, in the alternative, that there is a material issue of fact regarding whether the truck was being used in the "personal affairs" of Anderson Truss at the time of the collision. We agree that the term "personal affairs" is ambiguous because a corporation does not have "personal affairs." As such, it is necessary to resort to extrinsic evidence to determine what the parties intended by "personal affairs" of the corporation. Thus, there is a genuine issue of fact as to whether the truck qualified as a nonowned auto under Symbol 9 in Section I of the policy on the day of the collision.

¶ 44 *Whether Ryan Was an "Insured"*

¶ 45 Having considered the term "personal affairs" as creating an ambiguity, we must next determine whether Ryan was an "insured" within the meaning of Section II of the policy. The following are "insureds" under the "Who Is An Insured" provision in the policy, and amendment in the Business Auto Ultra Endorsement:

> "a. You for any covered 'auto'.
>
> b. Anyone else while using with your permission a covered 'auto' you own, hire or borrow except:
>
> * * *
>
> c. Anyone liable for the conduct of an 'insured' described above but only to the extent of that liability."
>
> "f. Any employee of yours while acting in the course of your business or your personal affairs while using a covered 'auto' you do not own, hire or borrow."

¶ 46 In this case, Ryan did not qualify as an insured under paragraph a, as he was not the named insured under the policy. Ryan did not qualify as an insured under paragraph b because he was not a permissive user of a vehicle that Anderson Truss owned, hired, or borrowed at the time of the collision. Paragraph c was inapplicable, as the plaintiff has not asserted any claim based on *respondeat superior* against Anderson Truss. Finally, Ryan did not qualify as an insured under paragraph f since he was not an employee of Anderson Truss at the time of the accident. We note that the plaintiff neither alleged in the complaint, nor presented facts to show, that Ryan was an employee of Anderson Truss on the date of the accident. Thus, we agree with the trial court that there was insufficient evidence to prove that Ryan was an insured within the meaning of the policy at the time of the accident.

¶ 47 III. CONCLUSION

¶ 48 To qualify for liability coverage under the defendant's commercial auto policy, the truck involved in the collision must have been a nonowned auto under Symbol 9, and the truck must have been operated by "an insured" under Section II. Despite the ambiguity raised by the term "personal affairs," the evidence failed to show that Ryan qualified as an "insured" under either Section II, or the endorsement. Since Ryan was not an "insured" within the meaning of the policy, there was no liability coverage for his alleged negligence on the day of the collision under the commercial auto policy issued by the defendant. Therefore, the trial court properly entered a summary judgment in favor of the defendant.

¶ 49 For the reasons stated, the trial court did not err in entering a summary judgment in favor of the defendant.

¶ 50 Affirmed.